DOCUMENT RESUME

ED 255 442 SO 016 361

TITLE	Guide to Alabama Court Procedures.
INSTITUTION	Alabama Administrative Office of Courts, Montgomery.
PUB DATE	84
NOTE	36p.; For related documents, see SO 016 360-370. Some charts may not reproduce clearly.
PUB TYPE	Guides - Non-Classroom Use (055)
EDRS PRICE	MF01/PC02 Plus Postage.
DESCRIPTORS	Constitutional Law; Court Doctrine; Criminal Law; Due Process; Federal Courts; Governmental Structure; Justice; *Laws; *Legal Education; Postsecondary Education; Secondary Education; *State Courts
IDENTIFIERS	Alabama; *Law Related Education

ABSTRACT

Designed to assist the public in understanding the judicial system and judicial process in Alabama, this handbook (1) presents an overview of Alabama's courts and their jurisdictions, (2) identifies the officers of the courts and the contributions each makes to the judicial process, and (3) narrates in general terms the procedures most common to the processing of civil and criminal cases. Separate sections focus on the following topics: the Alabama courts, civil cases, criminal cases, trials, appeals, judicial discipline, and judicial administration. A glossary of legal and judicial terms is included. Although the handbook is devoted to Alabama's legal system, it can serve as a model for those teaching about judicial procedures in other states. (LH)

****
* Reproductions supplied by EDRS are the best that can be made *
* from the original document. *
****

U.S. DEPARTMENT OF EDUCATION
NATIONAL INSTITUTE OF EDUCATION
EDUCATIONAL RESOURCES INFORMATION CENTER (ERIC)

This document has been reproduced as received from the person or organization originating it.

Minor changes have been made to improve reproduction quality.

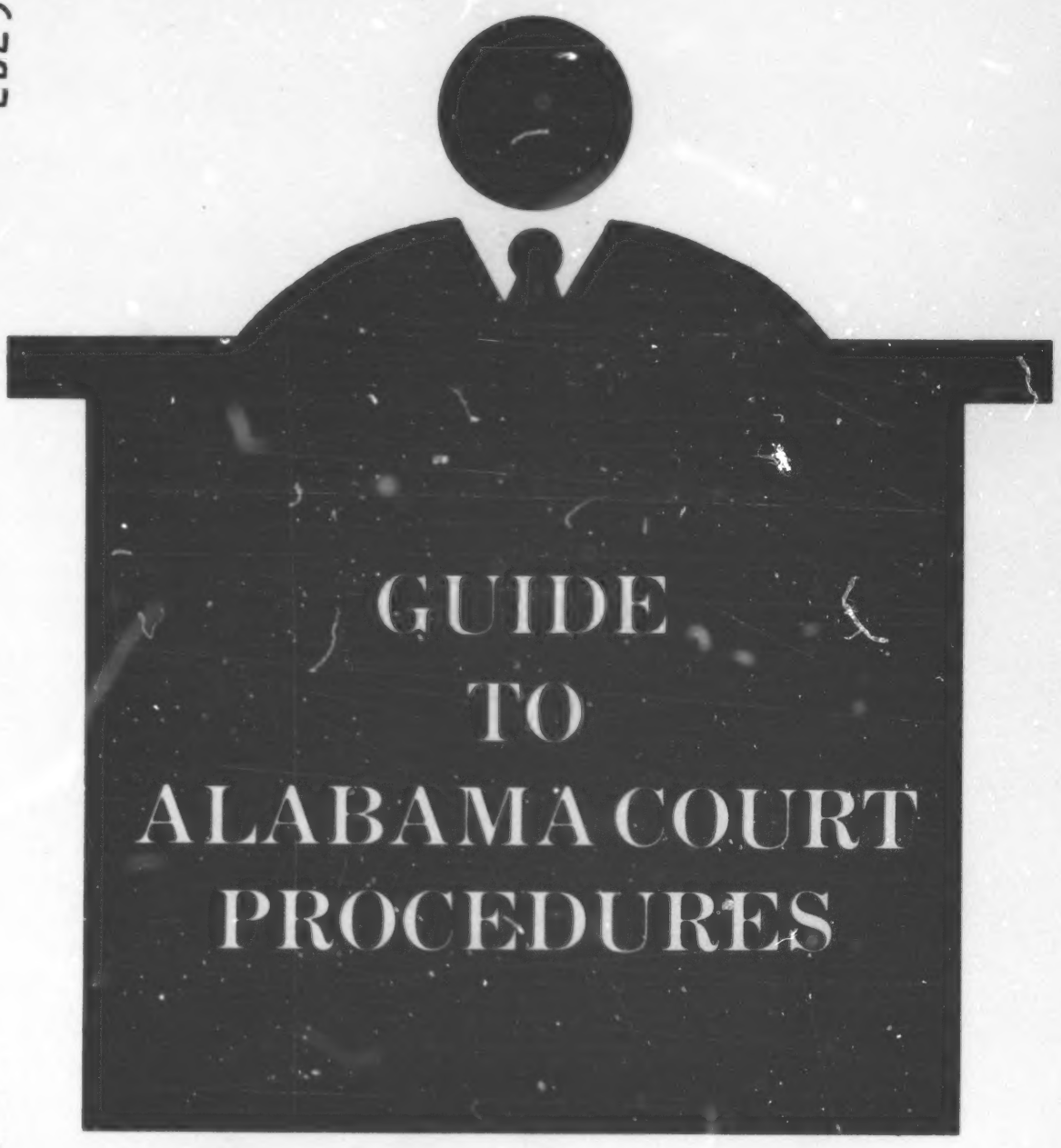
Points of view or opinions stated in this document do not necessarily represent official NIE position or policy.

"PERMISSION TO REPRODUCE THIS MATERIAL HAS BEEN GRANTED BY

William A. Campbell

TO THE EDUCATIONAL RESOURCES INFOPMATION CENTER (ERIC)."

ED255442



GUIDE TO ALABAMA COURT PROCEDURES

SP 016 361

GUIDE
TO
ALABAMA COURT
PROCEDURES

ADMINISTRATIVE OFFICE OF COURTS
817 South Court Street
Montgomery, Alabama 3613[illegible]

INTRODUCTION

This handbook was prepared by the Alabama Administrative Office of Courts to assist the public in better understanding the judicial system and judicial process in Alabama. The objective of this handbook is to present an overview of our state courts and their jurisdictions, to identify the officers of the courts and the contributions each makes to our judicial process, and to narrate in general terms the procedures most common to the processing of civil and criminal cases from filing to trial to appeal. To aid the reader, a glossary of common legal and judicial terms is included.

Most court proceedings are open to the public and citizens are invited and encouraged to attend. For information concerning the court in your community, please contact your judge, clerk of court, or other local court officials.

Any reference in the handbook to a specific gender is solely for use in writing.

TABLE OF CONTENTS

THE ALABAMA COURTS

Trial Courts of Limited Jurisdiction 1

Trial Courts of General Jurisdiction 1

Intermediate Appellate Courts 1

Highest State Court 2

Relationship Between State and Federal Courts 4

CIVIL CASES

How a Lawsuit Begins 6

Service of Process 6

Jurisdiction and Venue 7

Preparation for Trial 7

CRIMINAL CASES

Bringing the Charge 9

The Grand Jury 9

Arrest Procedure 9

Preliminary Hearing 10

Arraignment 10

Plea Bargaining 10

TRIAL — CIVIL OR CRIMINAL

Officers of the Court 12

The Jury 12

Opening Statements 13

Presentation of the Evidence by the Plaintiff or State 13

Cross-Examination 14

Re-direct Examination 14

Motion for Directed Verdict 14
Presentation of the Evidence by the Defendant 14
Rebuttal Evidence 14
Conferences During the Trial 14
Closing Arguments 14
Instructions to the Jury 15
Jury Deliberations 15
Verdict 15
Judgment 15
Sentencing 15

APPEALS

Rights to Appeal 18
Appellate Jurisdiction 18
Appeals Process 18

JUDICIAL DISCIPLINE

Judicial Inquiry Commission 21
Court of the Judiciary 21

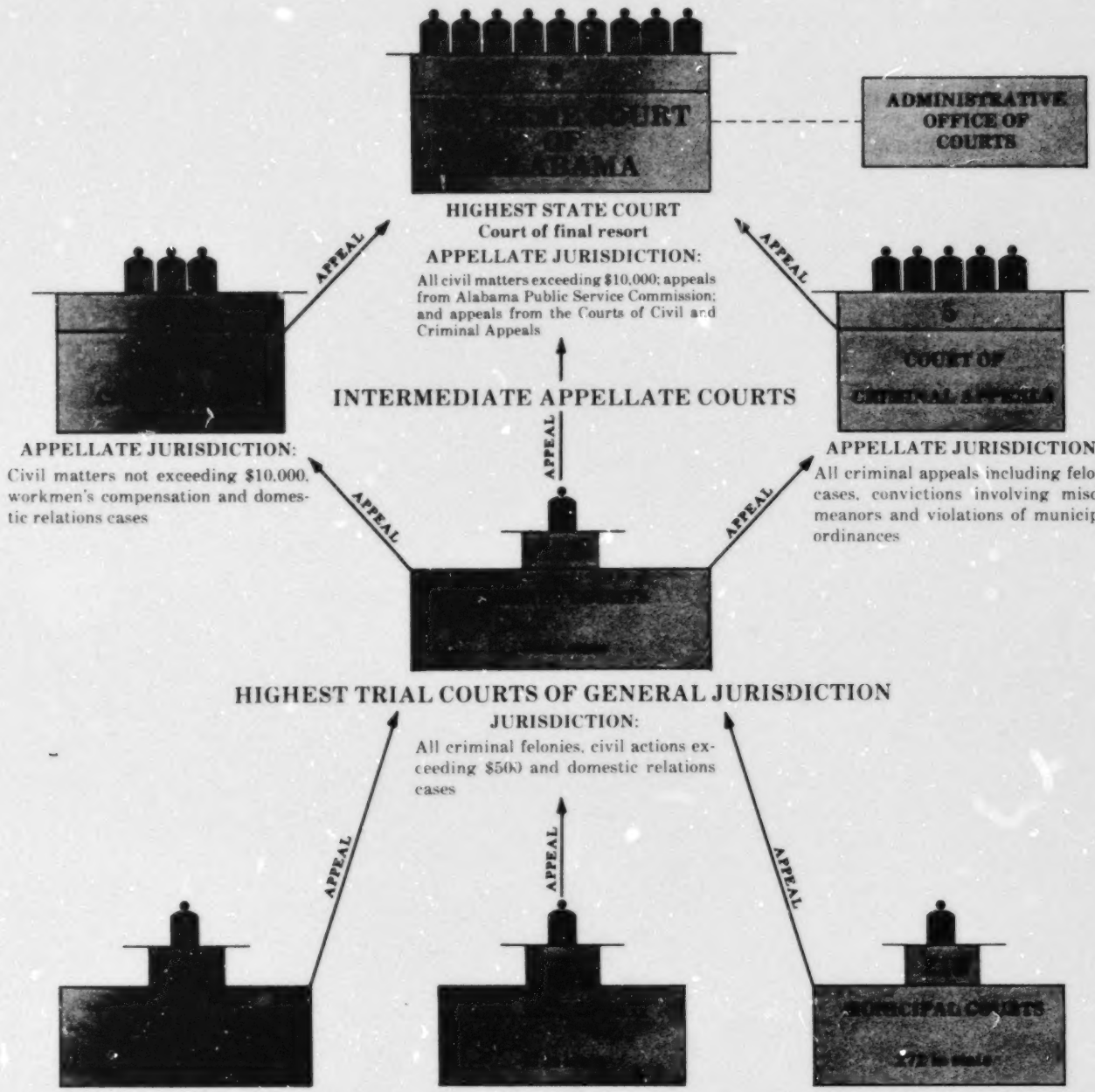
JUDICIAL ADMINISTRATION

Administrative Office of Courts 22
Judicial Coordinating Committee 22
The Judicial System Study Commission 22
Alabama Judicial College 22

GLOSSARY OF LEGAL AND JUDICIAL TERMS

BEST COPY AVAILABLE

ALABAMA JUDICIAL SYSTEM


ADMINISTRATIVE OFFICE OF COURTS
HIGHEST STATE COURT
Court of final resort
APPELLATE JURISDICTION:
All civil matters exceeding $10,000; appeals from Alabama Public Service Commission; and appeals from the Courts of Civil and Criminal Appeals
APPEAL
APPEAL
INTERMEDIATE APPELLATE COURTS
APPELLATE JURISDICTION:
Civil matters not exceeding $10,000, workmen's compensation and domestic relations cases
APPELLATE JURISDICTION:
All criminal appeals including felony cases, convictions involving misdemeanors and violations of municipal ordinances
APPEAL
APPEAL
APPEAL
HIGHEST TRIAL COURTS OF GENERAL JURISDICTION
JURISDICTION:
All criminal felonies, civil actions exceeding $500 and domestic relations cases
APPEAL
APPEAL
APPEAL
COURTS OF LIMITED JURISDICTION*

JURISDICTION:
Special court which handles wills, administration of estates, guardianship of minors and incompetents

JURISDICTION:
Misdemeanors and Small Claims actions; concurrent jurisdiction with Circuit Court in civil matters not exceeding $5,000

JURISDICTION:
Violations of municipal ordinances are heard by municipal judges in municipalities that choose to maintain their municipal courts. (Otherwise, these cases are tried in district court.)

* Appeals from courts of limited jurisdiction go to circuit court for trial **de novo** (a new trial). Other appeals may go to the appropriate appellate court if there is an adequate record from the lower court and only when questions of law are involved in such an appeal.

THE ALABAMA COURTS

In Alabama, there are three court levels. Each higher level has greater jurisdiction to hear and decide cases.

These three court levels are **trial courts of limited jurisdiction, trial courts of general jurisdiction** and the **appellate courts.**

Courts of Limited Jurisdiction. Alabama's courts of limited jurisdiction include district, municipal and probate courts.

Alabama's **district courts** generally have original jurisdiction over criminal misdemeanors, can hold preliminary hearings in felony prosecutions, and can receive guilty pleas in felony cases not punishable by death. These courts exercise concurrent jurisdiction with the circuit courts in juvenile matters and civil actions where the amount in controversy does not exceed $5,000.

The district courts have exclusive jurisdiction over all civil actions where the amount in controversy does not exceed $500. These actions are referred to as **small claims.** Citizens can file small claims actions in the district court without being represented by an attorney. Examples of such cases are landlord/tenant complaints, neighborhood disputes, consumer problems and small collections. A free booklet giving specific information about filing a small claim is available from the clerk of the court in each county.

There is a district court in each county, and judges are elected to six-year terms. Vacancies are filled by appointment by the governor.

Under Alabama's judicial system, municipalities may choose to maintain their **municipal court** or utilize the district court for prosecution of municipal or city ordinance violations. Municipal judges are appointed by the governing body of the municipality

Probate courts have general jurisdiction over all matters involving the probate of wills, the administration of estates for persons who die without wills, matters regarding guardians for minors and persons of unsound mind, property rights of widows, and the partition of lands. There is a probate judge in each of Alabama's 67 counties. Probate judges are elected for six year terms.

Courts of General Jurisdiction. Alabama's trial courts of general jurisdiction are the **circuit courts** which have original trial jurisdiction over all felonies, civil actions where the amount in controversy exceeds $5,000, and domestic relations cases. The circuit courts exercise concurrent jurisdiction with the district courts in civil actions exceeding $500 and in juvenile cases.

Circuit courts also have the authority to hear cases appealed from courts of limited jurisdiction with the exception of specific types of cases which require an appeal to one of the intermediate appellate courts. A case appealed from a court of limited jurisdiction will be tried **de novo** in the circuit court, meaning the case will be tried again as if it had not been heard in the lower court.

Intermediate Appellate Courts. If a case is appealed from a circuit court (or district court if an adequate record is available and the parties waive any right to a jury trial in the circuit court), appellate jurisdiction lies with one of Alabama's three appellate courts.

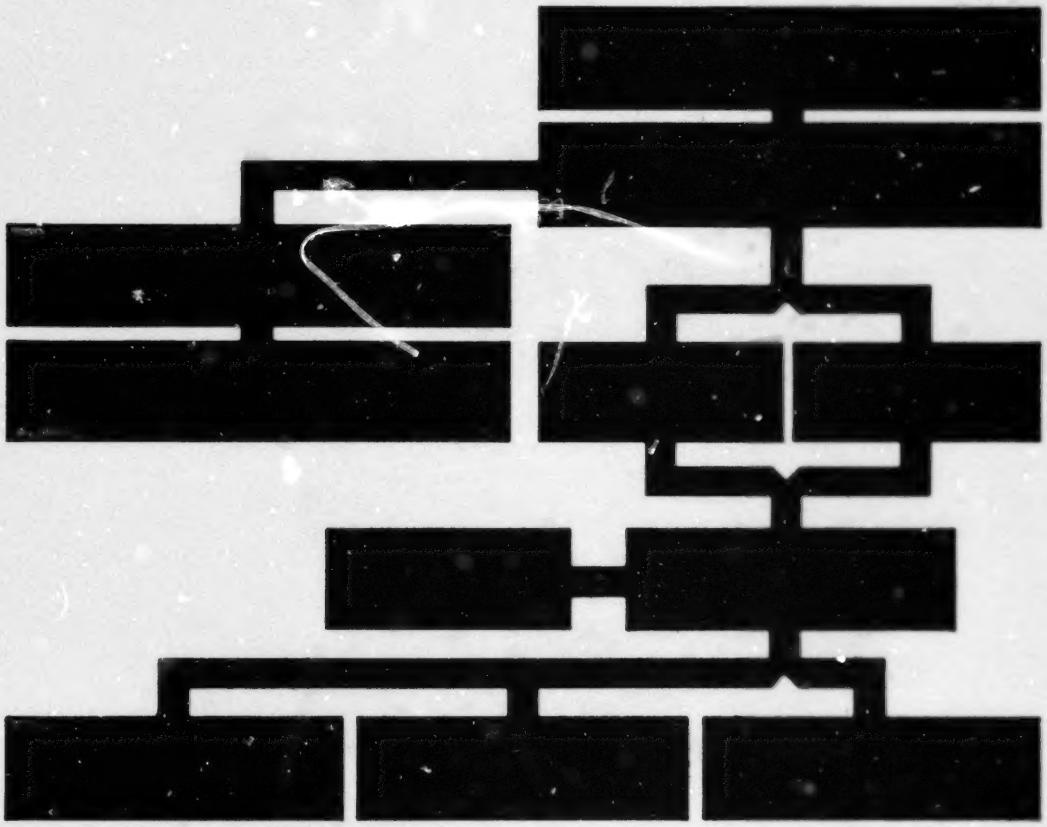
The **court of civil appeals** has jurisdiction over all civil appeals where the amount involved does not exceed $10,000, appeals from administrative agencies other than the Public Service Commission, and appeals in workmen's compensation and domestic relations cases. The court is composed of a presiding judge and two associate judges, each elected to six-year terms. Vacancies on the court are filled by appointment by the governor.

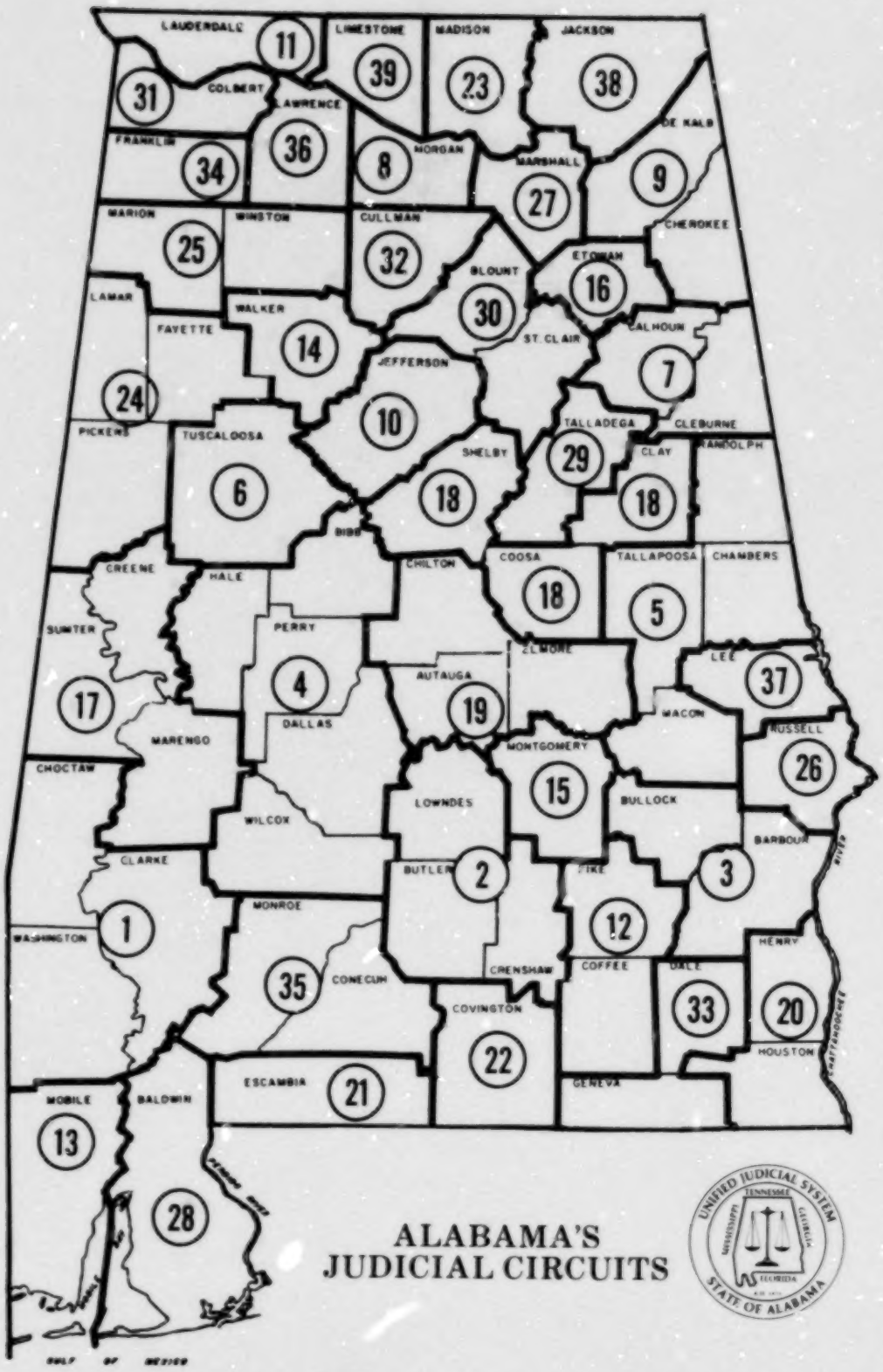
The **court of criminal appeals** has jurisdiction over all criminal appeals including capitol felony cases and appeals of convictions in cases involving misdemeanors and violations of municipal ordinances. The court is composed of a presiding judge and four associate judges, each elected to six-year terms. Vacancies on the court are filled by appointment by the governor.

Highest State Court. The **supreme court**, Alabama's highest state court, has the power to superintend and review any case tried, heard or appealed in any other court in the state. The supreme court has exclusive jurisdiction over all appeals where the amount in controversy exceeds $10,000 and appeals from the Alabama Public Service Commission. The supreme court is composed of a chief justice and eight associate justices, each elected to six-year terms. Vacancies on the court are filled by appointment by the governor.

In addition to hearing appeals, the supreme court has administrative responsibility for operation of the state's judicial system. The chief justice of the supreme court is the chief administrative officer of the state judicial system and is charged with the responsibility of ensuring that Alabama's courts operate efficiently and effectively.

JUDICIAL ORGANIZATIONAL CHART





ALABAMA'S JUDICIAL CIRCUITS

RELATIONSHIP BETWEEN STATE AND FEDERAL COURTS

Our federal Contitution provides for two seperate systems of law — that of the states and that of the national government. Thus, two separate and distinct sets of courts, state and federal, exist side by side in the United States.

Federal courts hear different types of cases than the state courts. The cases and controversies which are subject to federal jurisdiction fall into two distinct classes: first, disputes which involve federal questions, such as cases arising under the Constitution, federal laws, and treaties; second, without regard to subject matter, cases in which the United States is a party, or controversies between two or more states, between a state and citizens of another state, or between citizens of different states when $10,000 or more is involved.

In Alabama, state court judges are elected by the citizens for six-year terms. Federal court judges are appointed for life by the President of the United States with the approval of the Senate of the United States.

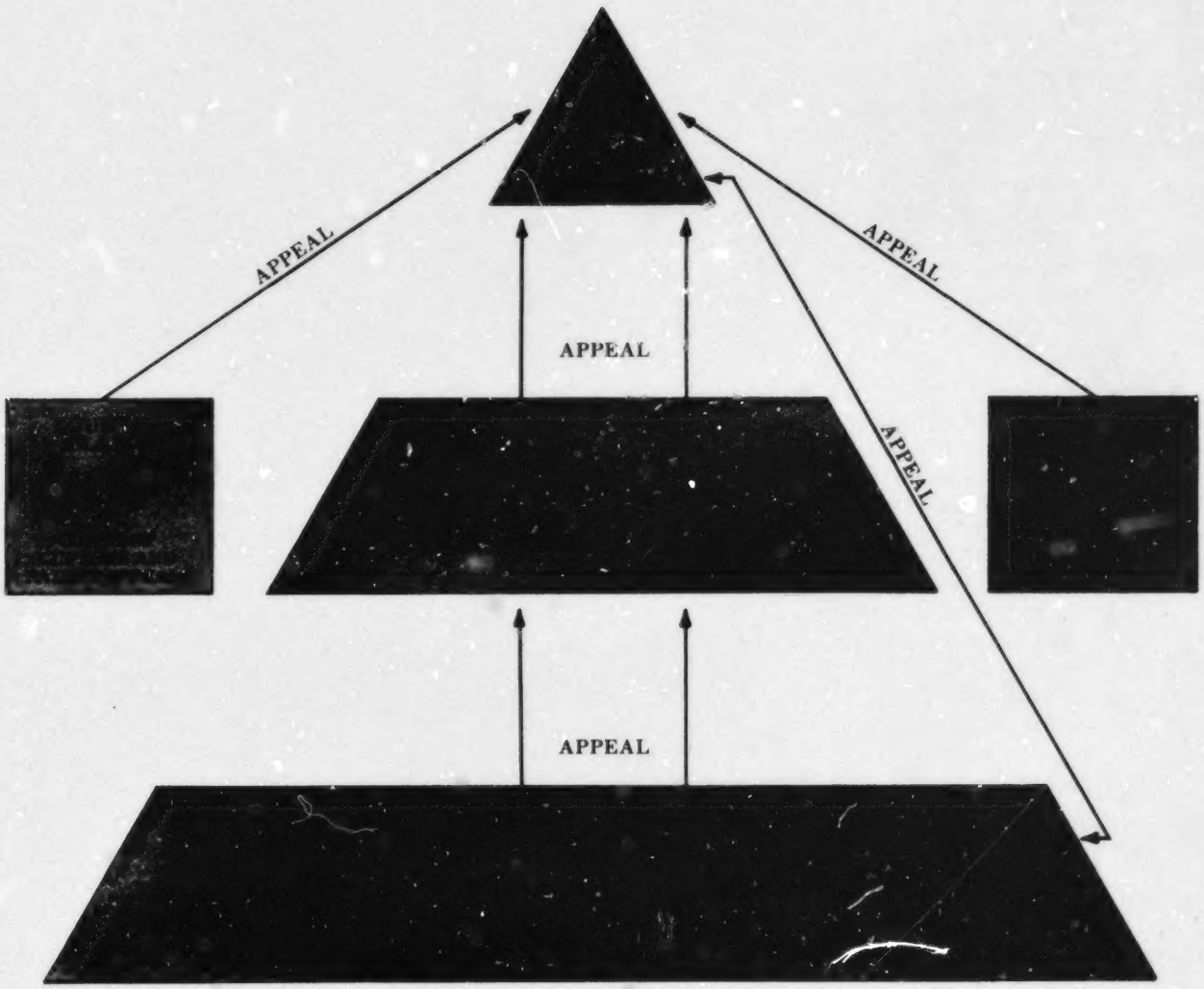
The federal district court is much like the state circuit court: it conducts trials, and its decision may be appealed to an appellate court. With a few exceptions, federal district courts have original jurisdiction over all civil and criminal cases involving federal questions and are the only federal courts that normally use a jury. Like the state's trial courts, federal district courts dispose of most federal cases.

There is at least one federal district court in each of the states. There are three district courts in Alabama, the Northern, Middle and Southern Districts headquartered in Birmingham, Montgomery and Mobile, respectively.

An appeal from a federal district court is heard by the Circuit Court of Appeals. The territory of the United States is currently divided into 11 numbered circuits plus the District of Columbia (D.C.) Circuit. As of October 1, 1981, Alabama became part of the 11th Circuit along with Florida and Georgia.

The Supreme Court of the United States is the highest court in the federal judicial system and the country. Cases are appealed to the Supreme Court from the state courts, from the federal courts of appeals, and in some instances, directly from the federal district courts.

FEDERAL COURT STRUCTURE
AND
FLOW OF CASES
TO SUPREME COURT



CIVIL CASES

Civil cases are actions in which an individual, business or agency of government seeks damages or relief from another individual, business or agency of government. Typical examples are suits for damages arising from an automobile accident, divorce, or breach of contract.

How a Law Suit Begins. A person who believes that he has been injured or damaged by another person or business will relate to an attorney the facts and circumstances which he believes constitute a cause for legal action. The attorney will take the client's statement, interview possible witnesses, examine applicable statutes and court decisions, and try to determine whether the client has a **cause of action**, that is, a right to recover.

In those instances where the amount in controversy does not exceed $500, an individual may file a small claim in the district court without the assistance of an attorney. For civil actions involving more than $500 or dealing with complex legal issues, an individual should consult an attorney.

If the attorney concludes that the client does have a cause of action, the attorney will prepare and file a complaint with the clerk of the court. The party initiating the complaint is the **plaintiff**, and the person or entity against whom the complaint is filed is the **defendant**.

The **complaint** states the facts of the plaintiff's case against the defendant and sets out the damages suffered and the judgment or other relief sought. The purpose of the complaint is to provide notice to the defendant of the plaintiff's claim so that he may respond and prepare a defense or defenses to that claim.

Service of Process. After the complaint is filed by the plaintiff's attorney, the clerk of the court will issue a **summons** along with a copy of the complaint, requiring the defendant to appear in court and **answer** or defend the action. The clerk will deliver the summons to the sheriff of the county for **service**, or delivery to the defendant. Service may also be completed through delivery by certified mail, or in limited cases, by publication in a newspaper in the county.

When the service copies have been served, the defendant is entitled to 30 days (14 days in district or small claims court) in which to file his answer to the plaintiff's complaint. An **answer** is a statement by the defendant which denies the allegations in the plaintiff's complaint, or admits some and denies others, or admits all and pleads an **excuse** such as negligence or fraud on the part of the plaintiff. The latter type of response is called an **affirmative defense**.

If the defendant allows the time period to lapse without filing an appearance or answer, the plaintiff may take a **default judgment** against the defendant.

A **counterclaim** or **cross-claim** may be filed by the defendant either separately or as part of his answer. The former asks for relief or damages on the part of the defendant against the original plaintiff, while the latter demands relief stating that a defendant "is or may be liable" to the crossclaimant.

The complaint, answer, counterclaim and crossclaim are called pleadings. A **pleading** refers to a written document which sets forth the claims, counter-claims, crossclaims or defenses of the parties and should not be confused with an argument made in court by a lawyer.

Additionally, at any time after the commencement of an action, a defending party, as a third-party plaintiff, may cause a summons and complaint to be served upon a person not a party to the action who is or may be liable to him for all or part of the plaintiff's claim against him. If a counterclaim is asserted against a plaintiff, he may also cause a third party to be brought in under the same circumstances which would entitle a defendant to do so.

Jurisdiction and Venue. The plaintiff's attorney must select the proper county in which to file the complaint. A court has no authority to render a judgment in any case unless it has jurisdiction over the person and/or property involved. **Jurisdiction** refers to the authority of the court to hear, determine, and render judgment on issues.

Certain actions are said to be **local** — that is, they may be brought only in the county where the subject matter of the litigation is located. For instance, a suit involving a particular tract of land can only be tried in the county where the land is located.

Other actions are said to be **transitory** — that is, they may be brought in any county in any state where the defendant may be found and served with summons. An action for personal injuries is an example of a transitory action.

Venue refers to the county where the action is to be tried. If a party to a legal action believes that a fair and impartial trial cannot be obtained in the county where the action is pending, he will file a motion with the court for a **change of venue**. The court will then review the motion and if it determines that such change will best serve justice, it will grant the motion and transfer the case to another county.

A motion for a change of venue is sometimes sought in cases which have generated widespread pretrial publicity. Venue may then be changed in an effort to secure jurors who have not formed an opinion or to provide a neutral forum not charged with local prejudice.

Preparation for Trial. The plaintiff and defendant, through their respective attorneys, will attempt to discover all the pertinent facts bearing on the case. This process is referred to as **discovery**.

The most important method of obtaining discovery is by oral deposition. A **deposition** is an out-of-court statement of a witness, under oath, intended for use in court or in preparation for trial. A deposition is much like testimony at trial and takes the form of oral answers to oral questions, followed by cross-examination. Depositions frequently are necessary to preserve the testimony of important witnesses who cannot appear in court or who reside in another state or jurisdiction.

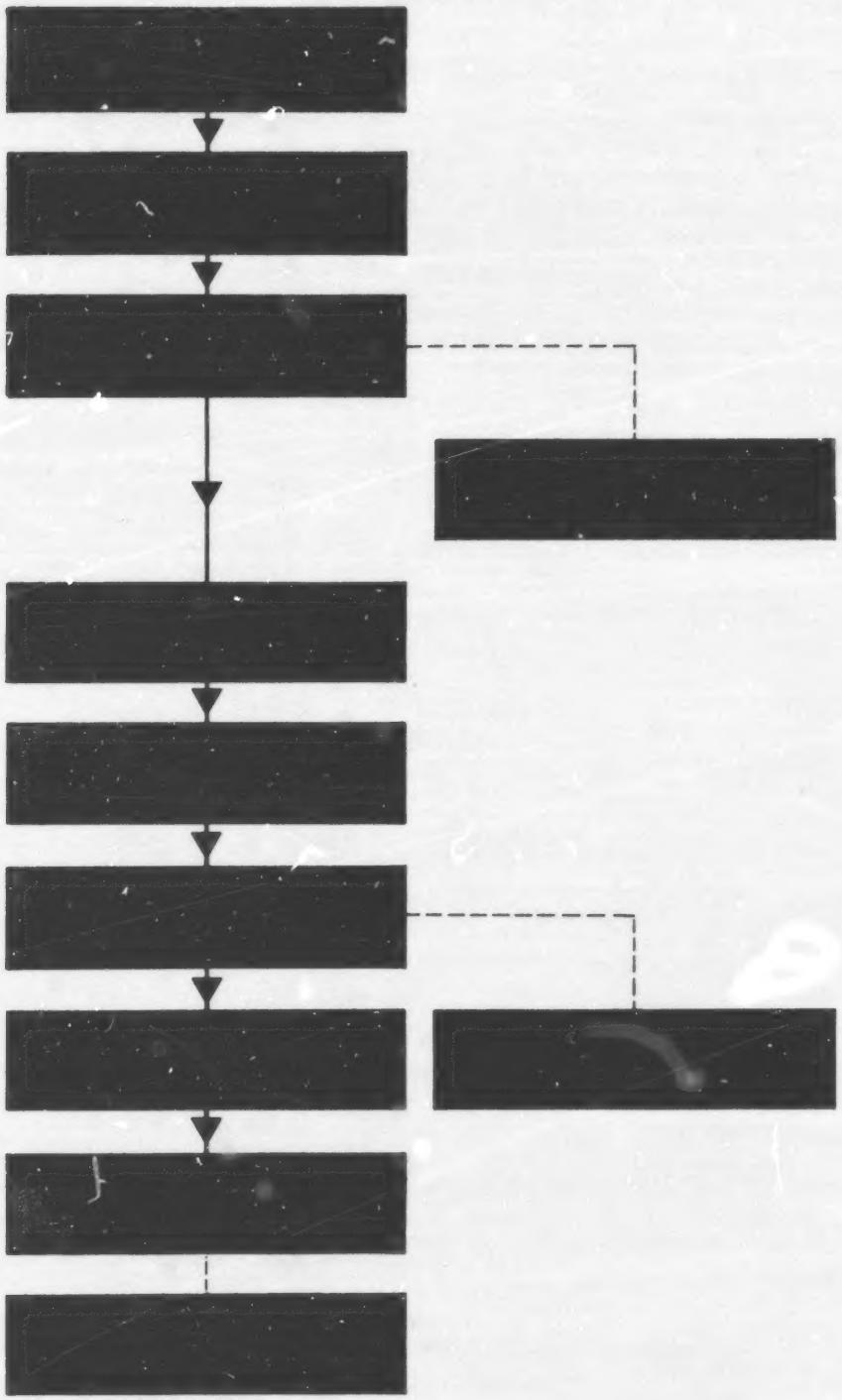
If a witness is absent from the jurisdiction or is unable to attend the trial in person, his deposition may be read into evidence. If a person who has given a deposition also appears as a witness at the trial, his deposition may be used to attack his credibility, known as **impeaching the witness**, which occurs when his oral testimony at the trial is inconsistent with that contained in the deposition.

In addition to taking depositions, either party may submit written questions, called **interrogatories**, to the other party and require them to be answered in writing under oath.

The court may then set the case down for a **pretrial conference**. At this conference the attorneys meet with the judge, generally without their clients, in an effort to agree on undisputed facts, called **stipulations**. Stipulations may include such matters as time and place in the case of an accident, the use of pictures, maps or sketches, and other matters, including points of law.

The objective of the pretrial conference is to shorten actual trial time without infringing upon the rights of either party. A pretrial conference will frequently result in the settlement of the case without trial; if it does not, the court will assign a specific trial date for the case.

STATE CIVIL CASE PROCESS



CRIMINAL CASES

Criminal cases are actions brought by the state or federal government against an individual charged with committing a crime. There are basically three types of criminal acts or offenses in Alabama: felonies, misdemeanors and violations. A **felony** is an offense for which a sentence to a term of imprisonment for more than one year may be imposed and includes such offenses as murder, robbery and arson. A **misdemeanor** is a less serious offense for which a sentence to a term of imprisonment not in excess of one year may be imposed and includes such offenses as trespassing and traffic violations. A **violation** is an offense for which a sentence to a term of imprisonment not in excess of 30 days may be imposed and includes such offenses as littering and public intoxication.

Bringing the Charge. An arrest warrant may be issued as the result of: (1) a complaint filed by a prosecutor, an officer of the law or a citizen; or (2) an indictment returned by the grand jury. In either case, the complaint filed must set forth the time, date, and place of the alleged criminal act as well as the nature of the criminal act.

The Grand Jury. The **grand jury** in Alabama is composed of 18 citizens summoned by the court to inquire into alleged crimes committed within a given county.

Grand jury proceedings are private, and prospective defendants are not entitled to be present at the proceedings.

The grand jury has broad investigative powers: it may compel the attendance of witnesses, require the taking of oaths, compel answers to questions and the submission of records, and undertake inquiries of its own, independent of the prosecutor.

If the grand jury decides there are sufficient grounds to bind a defendant over for trial, it will issue an **indictment** (a **true bill**) which is the official accusatory document charging the individual with a crime. If the grand jury fails to return an indictment, a **no bill** is issued. All felony offenses, such as murder or robbery, must be charged by indictment prior to trial. In non-capital cases where the defendant is in jail and desires to plead guilty, the right to be indicted may be waived.

Arrest Procedure. When an indictment is returned by a grand jury, or a complaint is filed establishing probable cause, a judge or magistrate will issue a warrant for arrest of the person charged if he has not already been arrested and taken into custody. When an individual is placed under arrest or otherwise detained for custodial questioning, the **Miranda warning** must be given. A law enforcement official must inform the person that (1) he has the right to remain silent, (2) anything he says can and will be used against him in court, (3) he has the right to talk to an attorney before and during questioning, and (4) if he cannot afford an attorney, one will be appointed to represent him prior to any questioning. If the accused waives these rights, he must do so voluntarily and intelligently. Unless and until these warnings, or waivers of these rights, are demonstrated at the trial, no evidence obtained in the interrogation may be used against the accused.

After the arrest, the accused will be taken to the police or other law enforcement facility for booking. The **booking** process is simply the recording of the arrest, namely: time, place, and nature of the crime, circumstances of the arrest, and names of any victims and/or witnesses. The accused will be fingerprinted and photographed in order to verify his identity and to check for any prior criminal record or current outstanding arrest warrants.

If the accused is charged with an offense bailable as a matter of right, he may be released on **personal recognizance**, meaning his individual promise to appear in court unless the court determines that such a release will not reasonably assure the defendant's appearance as required. Unless the accused is charged with a **capital offense**, that is, a felony punishable by death, Alabama law requires the defendant to be brought before a judge or magistrate within a reasonable length of time and to be released on his own recognizance or under such conditions as the court may impose to assure the defendant's appearance at trial or which will minimize the risk of harm to others or to the public at large.

Preliminary Hearing. Every defendant arrested for a felony has the right before indictment by a grand jury to request a **preliminary hearing** within 30 days of arrest. The purpose of the preliminary hearing is not to decide the innocence or guilt of the accused but to determine whether there is probable cause to require him to stand trial for the offense charged. The state, or **prosecutor**, must present sufficient evidence to convince the judge that there is reason to believe the defendant has committed the crime with which he is charged. The defendant must be present at this hearing and may present evidence on his own behalf, and both the prosecution and the defense may present evidence and examine witnesses.

If probable cause is found, the judge will **bind over** the defendant to the grand jury; that is, the defendant will either be released under the conditions established by the court and will be required to appear at trial or will be held in the county jail if the charge involved is not a bailable offense or if the defendant is unable to meet the conditions of release established by the court.

If the judge concludes the state has failed to produce sufficient evidence in the preliminary hearing, he will dismiss the complaint and order the defendant released. If the complaint is dismissed at the preliminary hearing, the prosecutor may still submit the case to the grand jury for an indictment.

Arraignment. In most instances a criminal case is placed on the court's calendar for arraignment. **Arraignment** means "entry to plea." This hearing takes place in the trial court with both the defendant and prosecutor present. If the defendant is not represented by counsel, but desires legal assistance and is **indigent**, unable to afford counsel at his expense, the court will make available the service of the public defender or other appointed counsel.

When the accused appears before the court with counsel, the indictment will be read to him, his rights will be explained by the judge, and he will be asked whether he pleads "guilty," "not guilty," or "not guilty by reason of insanity."

If an accused pleads "guilty," the judge will question him to ascertain that the plea is made voluntarily with full understanding of the charge and the possible punishment. In the event of a guilty plea, the next step will be the imposition of sentence which may take place then or at a later time. The accused, however, has the right to withdraw and resubmit his plea at any point prior to sentencing.

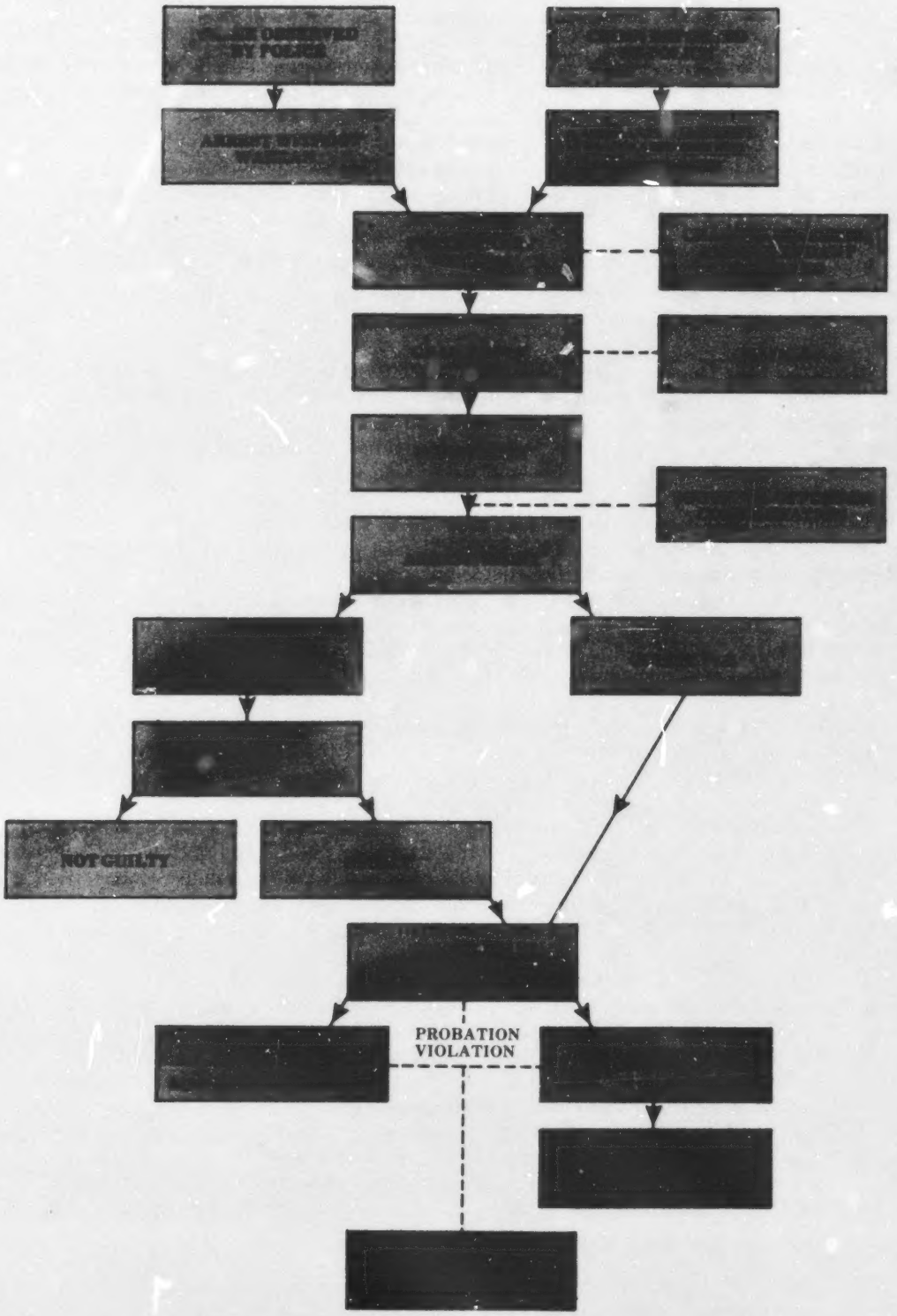
If the defendant pleads "not guilty," or if he does not plead, the court will enter a plea for him and a date will be set for trial. The attorneys for both sides will carefully prepare their cases, interview prospective witnesses and, if deemed necessary, will secure expert witnesses, and gather testimony concerning ballistics, chemical tests, and other similar data.

Plea Bargaining. Many cases are settled without trial by negotiations between the parties. In criminal cases, the process of settlement without trial is called **plea bargaining**. Plea bargaining is an arrangement between the prosecution and the accused and his attorney whereby the accused pleads guilty to a charge in exchange for some benefit or predictable recommended sentence.

The court is not a party to the plea bargain and is not obligated to accept a bargained plea. If it declines to do so, the case will then be tried.

The purposes of plea bargaining are to reduce court time and delay before trial, assure a degree of certainty in the disposition of the case, decrease pretrial confinement, and enable the courts to manage increasing criminal caseloads with limited resources.

STATE FELONY CASE PROCESS



THE TRIAL — CIVIL OR CRIMINAL

Generally, every court adopts a **court calendar** which shows the weeks during which the court will hear certain types of cases. When a case is filed with the court, it will be assigned to a judge or division of the court for hearing. There is no single method for assigning cases. Each court can adopt local rules defining how cases in that particular court will be assigned.

After all pleadings and motions are filed, the case will be **set for trial**, that is, entered on the trial docket for a specific date. A **docket** is a court record showing what actions are scheduled for a particular time or session of court. If for some reason an action cannot be heard at the time originally scheduled, the judge may grant a **continuance**, and the case will be rescheduled at a later date. The case will move from docket to docket until the case is settled or disposed.

While there are minor differences in trial procedures between civil and criminal cases, the procedure is essentially the same. This section outlines the basic trial procedure applicable to both criminal and civil cases.

Officers of the Court. The **judge** is the officer who presides over the trial and is often referred to as "the court." If the case is tried before a jury, referred to as a **jury trial**, the judge rules upon points of law dealing with trial procedures and admissibility of evidence, and the jury decides the facts of the case. If the case is tried before the judge alone, referred to as a **non-jury** or **bench trial**, the judge will determine the facts as well as performing the aforementioned duties.

The **clerk** is the officer of the court responsible for maintaining the official records of the court, maintaining all papers and exhibits filed in cases before the court, preparing minutes of court proceedings and calendaring.

The office of **register** exists in some counties in Alabama. In such counties, it is the responsibility of the register to administer oaths in all cases and to process all matters from the circuit court relating to equity and domestic relations cases.

The **sheriff** in most jurisdictions provides court security and transfers prisoners to and from the court.

The **bailiff** calls the court to order, maintains order in the courtroom, calls witnesses to the stand and takes charge of the jury when it is not in the courtroom. When the jury is deliberating its decision in a case, it is the duty of the bailiff to see that no one talks with or attempts to influence the jurors in any manner.

The **court reporter** records all proceedings in the courtroom, including testimony of the witnesses, objections made to evidence by the attorneys, rulings of the court, and lists and marks for identification any exhibits offered or introduced into evidence. If a decision of a trial court is appealed, it is the responsibility of the court reporter to prepare a record of the proceedings of the trial, referred to as a **transcript**, for review by the appropriate appellate court.

The **attorneys** are officers of the court charged with the duty of representing their respective clients and presenting evidence on their behalf so that the jury or judge may reach a just verdict or decision.

The **district attorney** is responsible for representing the state in the prosecution of all criminal offenses and may represent the state in civil actions in which the state is interested. The district attorney is often referred to as the **prosecutor**.

Public defenders and **appointed counsel** are lawyers appointed by the court to represent a person charged with a crime who cannot afford an attorney. Before an accused receives legal representation at state expense, a check on the defendant's finances is completed to determine if he qualifies as an indigent.

The Jury. A jury of twelve is generally required in a trial proceeding; however, both parties may agree to a lesser number.

The jury selection process begins by summoning to court a group of prospective jurors, or the **venire**, who have been randomly chosen from voter registration, drivers' license, and other such lists in the county.

In Alabama, jurors generally serve for a term of one week. On the first day, the prospective jurors or venire will report to court, and an orientation session will be held. At this time, the venire will be introduced to the officers of the court, instructed on their duties and responsibilities as jurors, and provided information on trial procedures.

The case to be heard will be explained to the venire by the judge who will also note the names of the parties in the matter and their attorneys. The judge will then ask the venire questions, such as knowledge the jurors may have of the case or the parties involved. This questioning of the venire is referred to as **voir dire**. Voir dire is designed to reveal a prospective juror's background and general beliefs and whether those beliefs indicate bias toward either of the parties in the case.

If a prospective juror expresses an opinion or prejudice which indicates that he cannot render a fair decision or that he is biased, he may be **challenged for cause** by one or both attorneys. If the judge determines that the challenge is valid, he will excuse that person from the case.

After voir dire and challenges for cause, each side will alternately **strike**, or excuse, members of the venire until only twelve are left unless both parties have agreed to a lesser number prior to trial. The remaining venire will constitute the jury. The clerk of court will then administer the oath to the jurors.

Opening Statements. After the jury has been chosen and sworn in, the attorney for the party who is suing will make an **opening statement** to the jury about what he intends to prove. In a civil case, this is the plaintiff's attorney; in a criminal case, it is the prosecuting or district attorney. The defense attorney will then make an opening statement directly after the plaintiff's or state's opening statement.

Presentation of the Evidence by the Plaintiff or State. After the opening statements, the side bringing the suit, the plaintiff or the state, will call witnesses first and ask questions. The initial examination of a witness is referred to as **direct examination**.

A witness may testify to a matter of fact; he can tell what he saw, heard, felt, smelled or touched through the use of his physical senses. A witness cannot testify to **hearsay**, that is, what someone else has told him outside the presence of the parties to the action. A witness may also identify documents, pictures or other physical exhibits in the trial. Generally, a witness cannot state his opinion or give his conclusion unless it has been determined by the judge that he is an **expert** qualified in a particular field.

Usually, an attorney may not ask leading questions of his own witness. A **leading question** is one which suggests the answer desired. **Objections** may be made by the opposing counsel to, for instance, leading questions, questions which call for an opinion or conclusion on the part of the witness, or questions which require an answer based on hearsay. There are many other reasons for objections under the rules of evidence.

When an objection to a question is made, the judge will either sustain or deny it. If **sustained**, the attorney may either rephrase the question or ask another. If an objection to a question is sustained, the attorney asking the question may make an **offer of proof** by dictating to the court reporter, away from the hearing of the jury, the answer which the witness would have given if permitted. This offer forms part of the **record** should the case be appealed, and provides proof to the appellate court that the attorney was denied the opportunity to bring out specific information.

If an objection is **denied** or **overruled**, the witness may then answer the question.

If, during any part of the trial proceedings, an attorney or witness makes remarks which are deemed seriously prejudicial, the opposing attorney may object and request that the jury be instructed to disregard them and may, in some instances, move for a **mistrial**, that is, ask that the present trial be terminated and the case be set for retrial at a later date.

Cross-Examination. When the plaintiff's or state's attorney has finished direct examination of the witness, the defendant's attorney may then ask questions, referred to as **cross-examination**.

On cross-examination, the defendant's attorney will attempt to challenge the accuracy of the witness's direct testimony. The attorney may try to bring out prejudice or bias of the witness or other interest in the case. The witness can usually be asked questions which may bear upon his credibility, such as prior convictions for crimes involving moral turpitude. Leading questions are generally allowed on cross-examination.

Re-direct Examination. After the opposing attorney completes cross-examination, the attorney calling the witness may ask questions on **re-direct examination**. The purpose of re-direct examination is to rehabilitate a witness whose testimony has been damaged by cross-examination. The opposing attorney may then **re-cross-examine**.

Motion for Directed Verdict. The process of direct, cross, re-direct, and re-cross examination will continue until the attorney for the plaintiff or state has called all witnesses and presented all evidence. At the conclusion of the plaintiff's or state's evidence, the attorney will announce that the plaintiff or state **rests** its case.

At this point in the trial proceedings, the defense attorney may move to dismiss the plaintiff's or state's case claiming that a cause of action has not been proved. This motion is known as a **motion for a directed verdict** and is made in court but argued out of the presence of the jury. If the motion is granted, the case will be dismissed; if not, the case will proceed, and the defense will be given an opportunity to present evidence.

Presentation of the Evidence by the Defendant. If the defense attorney chooses to present evidence, he will so do in the same manner as the plaintiff or state, and the plaintiff or state will cross-examine the defendant's witnesses.

The plaintiff or state has the **burden of proof**, meaning the duty of proving a fact or facts in dispute. In a civil case, the plaintiff must prove his case by a **preponderance of the evidence**, meaning the greater weight of evidence. In a criminal case, the state must prove its case **beyond a reasonable doubt** and to a moral certainty.

In a criminal case, the defendant is presumed to be not guilty and is not required to prove his innocence. The criminal defendant has protection under the 5th Amendment to the Constitution of the United States, and under Article I, Section 6 of the Alabama Constitution, against self-incrimination and cannot be required to testify unless he wishes to do so.

Rebuttal Evidence. At the conclusion of the defendant's evidence, the plaintiff or state may then present **rebuttal** witnesses or evidence designed to disprove the testimony and evidence presented by the defendant. The defendant may cross-examine rebuttal witnesses.

Conferences During the Trial. Occasionally during the trial, the attorneys will ask permission to approach the bench and speak to the judge, or the judge may call them to the bench. They may talk about admissibility of certain evidence, irregularities in the trial or other matters. The judge and attorneys speak away from the hearing of the jury because the jurors might be prejudiced by what they hear.

The question of admissibility of evidence is a matter of law for the judge, not the jury, to decide. If the question is complex, the judge will order the jury to retire and will hear the attorney's arguments outside the jury's presence. Whenever the jury leaves the courtroom, the judge will admonish them not to form or express an opinion or discuss the case with anyone.

Closing Arguments. **Closing arguments** are summations to the jury of the facts and evidence brought out during the trial. The attorney for the plaintiff or state will present the first argument in closing the case, followed by the attorney for the defendant. The plaintiff or state will then be allowed to conclude.

Instructions to the Jury. Attorneys for each side may submit to the judge a number of instructions to give to the jury on the law that governs the case. The judge will indicate to the attorneys those instructions which he will accept and refuse, and the attorneys, in turn, may make objections to such rulings for the purpose of the record in case of an appeal. The judge will read the instructions to the jury, referred to as the judge's **charge** to the jury. In a civil case, the judge will define the issues the jury must decide if it is to find for the plaintiff or the defendant. In a criminal case, the judge will state to the jury the law as it applies to the case and will identify the types of verdicts which may be returned.

Jury Deliberations. The bailiff will escort the jury to the jury room where it will remain until a verdict is reached. The bailiff will be assigned to the jury and will not permit anyone to enter or leave the jury room or otherwise tamper with the jury during its deliberations.

The jury may review exhibits introduced into evidence and may, if necessary, return to the courtroom in the presence of both attorneys to ask a question of the judge regarding his instructions or to clarify a point of law.

In most cases, the jury will be excused to go home at night. In some felony criminal cases, however, it may be in the best interest of justice to **sequester** the jurors, that is, isolate them from all contacts with unauthorized persons.

Verdict. When the jury has reached a verdict, the bailiff will escort the jury to the courtroom where, in the presence of the judge, the parties and their attorneys, the verdict will be read in open court. The verdict must be unanimous unless, as in a civil trial, the parties have previously agreed to accept the verdict of the majority.

An attorney for either party may ask that the jury be **polled**, in which case each juror will be asked if the verdict is his verdict.

Sometimes jurors cannot reach an agreement as to what the verdict in a case should be. When the opinions of the jurors are so divided as to prevent their reaching a verdict, the jury is said to be a **hung jury**. In Alabama, when the jury is hung, the trial judge may give them further general instructions on the importance of reaching a verdict. If the jury remains deadlocked, the judge may declare a mistrial.

Judgment. The verdict of the jury is ineffective until the judge enters a judgment upon the verdict. A **judgment** is a written entry on a record of court giving legal effect to the verdict.

Sentencing. If a defendant is convicted of a criminal offense, the judge, not the jury, has exclusive discretion in determining and imposing the appropriate sentence as provided by law. Sentencing may take place either following the pronouncement of judgment or at a separate hearing.

If a defendant has pleaded guilty to or has been found guilty of a felony, either party or the court may require a **presentence investigation report**. This written report may contain information on the offense, the defendant's prior criminal record, education and employment background, financial status, and any other information which would aid the court in determining the sentence which would best protect the interest of the state while encouraging the rehabilitation of the defendant.

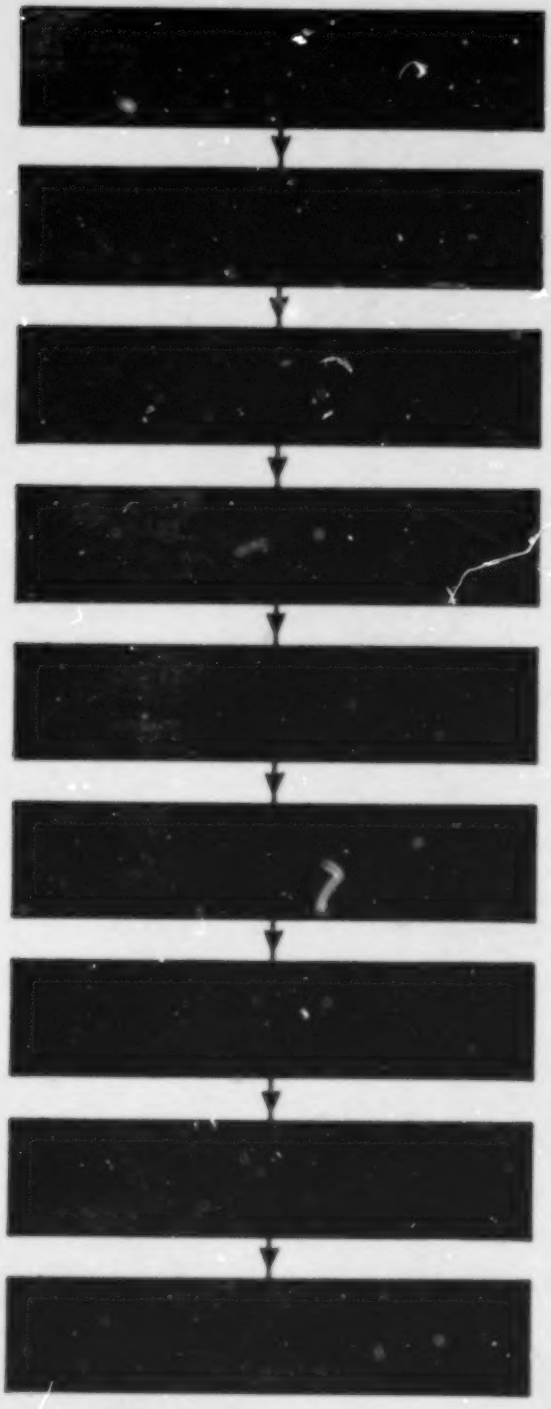
A person convicted of an offense must be sentenced in open court. At the sentencing hearing, the judge will allow the defendant to make a statement in his own behalf, referred to as the **allocution**. The judge will explain to the defendant the terms of the sentence or probation, if granted, order that any time the defendant has been in custody be credited toward the sentence, inform the defendant of his right to appeal and his right to counsel on the appeal. If the defendant is indigent and desires to appeal, the court will appoint counsel to represent him on the appeal and will provide the transcript required as part of the appeal.

Persons convicted of a misdemeanor or violation may be sentenced to a term of imprisonment or fined, or both. Persons convicted of a felony must be sentenced to a term of imprisonment and may also be fined.

When a person is convicted of a violation, misdemeanor or felony, if the sentence imposed is not more than 10 years, the court may **suspend the execution of the sentence** and place the defendant on **probation**, that is, the serving of the sentence will be withheld by the court provided that the defendant meets certain conditions established by the judge. Conditions of probation may include refraining from associating with certain people or frequenting certain places, maintaining steady employment, attending school and/or undergoing medical or psychiatric treatment. If the offense committed resulted in a victim's incurring damages or loss of money, the court may require **restitution**, meaning the defendant may be ordered to compensate the victim for the loss. If the defendant does not comply with the conditions set by the court, the probation may be revoked, and the defendant will be required to begin serving the sentence.

Probation should not be confused with **parole**. Parole is a process whereby the Alabama Board of Pardons and Parole grants a conditional release from prison to persons who have completed serving a portion of a term of imprisonment imposed by the courts.

ANATOMY OF A JURY TRIAL



APPEALS

Rights to Appeal. In a civil case, either the plaintiff or defendant can appeal to a higher court. Sometimes they both appeal. This is called a **cross appeal**.

In a criminal case, the right to appeal is limited to the defendant. The prosecutor cannot appeal if a defendant is **acquitted**, that is, found not guilty. Even if additional evidence is discovered which would convict the defendant, the prosecutor is powerless to bring him to trial again on the same charge because of a common-law and constitutional prohibition against **double jeopardy**.

Under Alabama's death penalty law, as it is commonly called, persons who have been convicted of a capital offense are entitled to an automatic appeal to the Alabama Court of Criminal Appeals. The Court of Criminal Appeals must review the conviction for possible error and the propriety of the imposition of the death penalty as well. The review by the Court of Criminal Appeals is subject to review by the Alabama Supreme Court.

Appellate Jurisdiction. Appeals in either civil or criminal cases may be on such grounds as error in trial procedure or error in **substantive law**, that is, interpretation of the law by the trial judge.

The appellate court will review the case by way of written record. The **record on appeal** consists of papers or exhibits filed in the trial court as well as the court reporter's transcript of the proceedings. The appellate court will review the case using only these documents. It does not see witnesses or hear testimony or have a jury.

Appeals Process. There are certain statutes and rules of court which must be followed in order to appeal a case from circuit court.

The right to appeal expires if the appeal is not filed within the legal time limits. This applies to both civil and criminal cases. In Alabama, the time limit is 42 days from the date of entry of the judgment or sentence.

To process an appeal, the party appealing, or **appellant**, must file a written **brief** which sets forth the specific error in the trial court proceedings and lists and explains the laws and case decisions the attorney wants the court to consider. The responding party, or **appellee**, has a specified time within which to file his **answer brief**. The appellant may then file a second brief, or **brief in reply** to the appellee's brief.

The attorneys may request **oral argument** before the appellate court. If there is not an oral argument, the attorneys submit the case to the court on the record and briefs alone. If the case is argued, appellate court rules give each party a set time to orally argue its case. During oral arguments, the attorneys can discuss only the facts included in the record on appeal. No new evidence can be presented to an appellate court.

After the attorneys argue their cases, or there is submission on the record and briefs, the court will begin the decision making process. In orally argued cases the judges will already have read the briefs and the record on appeal. They will consider issues presented by briefs or at oral argument, as the case may be, and may do further research on their own.

In their deliberations, the judges will consider questions of law, not fact. In criminal cases, the entire record of the case will be searched for errors of law. Not every error of law will warrant a reversal. Even if it is determined that the trial court made a mistake, the error may not always mean there was a miscarriage of justice. If the trial court's decision would have been the same with or without the error, then it is not considered to be a **prejudicial error**, meaning an error which would substantially affect the appellant's legal rights.

The appellate court can basically do one of four things. If it agrees with the trial court's ruling, it will **affirm**. Sometimes the appellate court may decide to **modify**, or change, the judgment or decision of the trial court. The appellate court can also **reverse and remand**, that is, set aside the original decision and return the case to the trial court for further proceedings. Finally, the appellate court can **reverse and render**, which means that, after

reviewing the evidence in the record on appeals, the appellate court will set aside the decision of the trial court and will render the decision the trial court should have rendered.

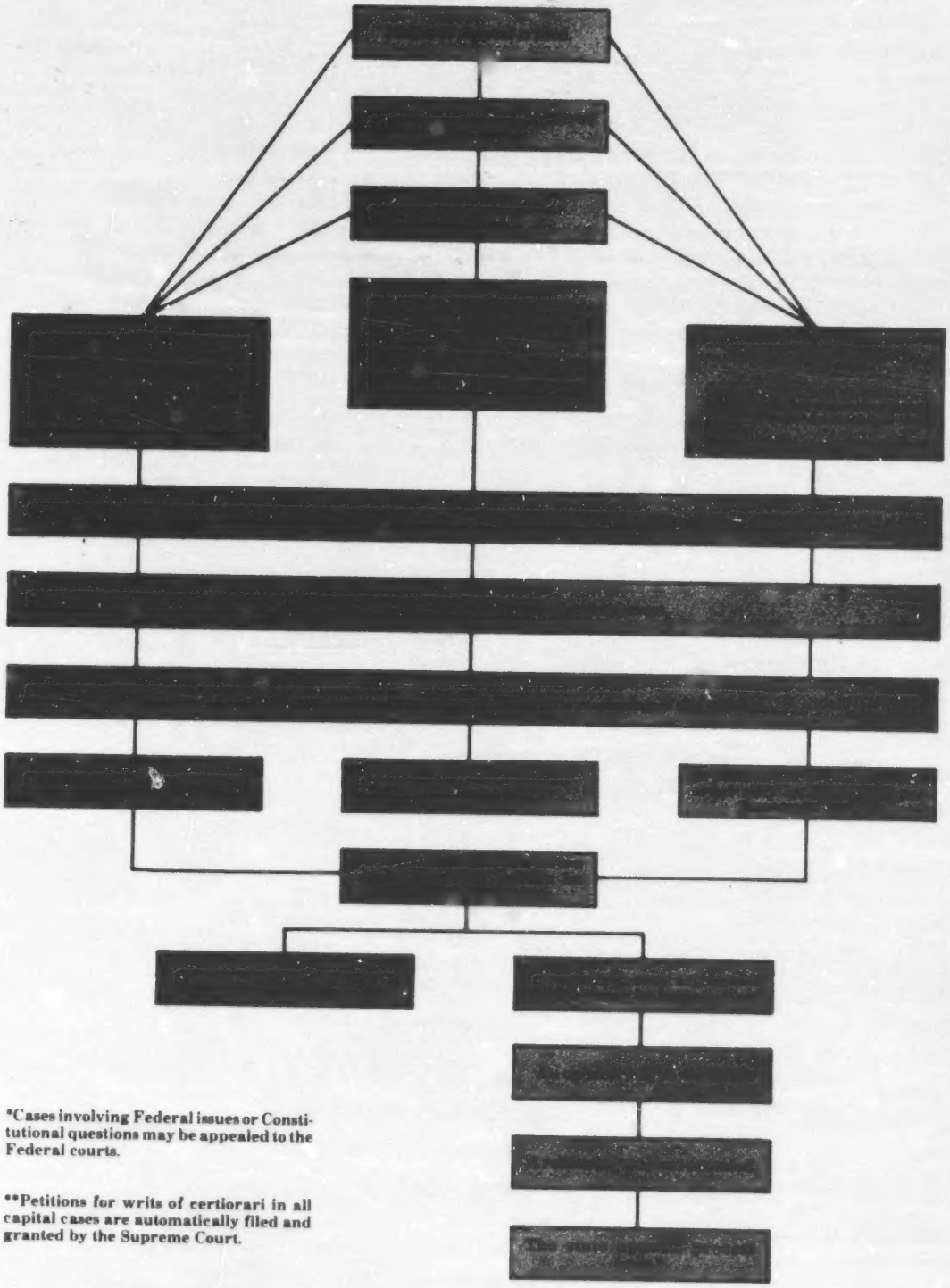
When the appellate court reaches a decision, the judge who has been assigned the case will, in most instances, write an **opinion**. An opinion is a statement of the appellate court's decision and the reasons upon which that decision is based. It will show how many judges agreed with the decision. If a judge disagrees with the majority view, he may dissent and file a **dissenting opinion**. Sometimes the court will issue a per curiam opinion. A **per curiam opinion** is a decision issued by the whole court rather than an opinion of one judge, or it is the disposition of the case without a written opinion.

The appellate court decision is not immediately final. When a decision has been issued by the court of civil appeals or by the court of criminal appeals, the losing party is allowed 14 days within which to petition or ask the court for a rehearing. If the court refuses, the losing side can then request the supreme court to hear the case. This petition is called a **writ of certiorari**. If the supreme court agrees to hear the case and renders a decision, the losing party again has 14 days to request a rehearing. If the rehearing is denied, there is no further state court to which an appeal can be made. At this point, the losing party is said to have exhausted all remedies in the state courts. Under certain circumstances, where federal Constitution questions are involved, an appeal can be taken to the federal courts.

Appellate court decisions, or opinions, are published in both the **Alabama Reporter** and the **Southern Reporter**, which may be found in law libraries.

BEST COPY AVAILABLE

STATE APPELLATE PROCESS



*Cases involving Federal issues or Constitutional questions may be appealed to the Federal courts.

**Petitions for writs of certiorari in all capital cases are automatically filed and granted by the Supreme Court.

JUDICIAL DISCIPLINE

Judicial Inquiry Commission. The Judicial Inquiry Commission is a seven-member commission established to investigate complaints of misconduct made against a state judge. The commission may bring charges against judges for violations of any canon of judicial ethics, misconduct in office, failure to perform their duties or for being physically or mentally unable to perform their duties. The commission is composed of an appellate judge, two circuit judges, two lawyers, and two persons who are neither a judge nor a lawyer.

Court of the Judiciary. This five-member court hears charges brought by the Judicial Inquiry Commission and may censure, suspend, retire or remove a judge from office. Appeals from this court go to the state supreme court. The court is composed of an appellate judge, two circuit judges and two lawyers.

JUDICIAL ADMINISTRATION

Administrative Office of Courts. The Administrative Office of Courts assists the Alabama supreme court and the chief justice, who is the chief administrative officer of the state' court system, in carrying out the administrative function for the state court system. The director of the Administrative Office of Courts, appointed by the chief justice, is responsible for the execution of administrative policies and rules in Alabama's judicial system. With the assistance of a support staff, the administrative director of courts performs the following functions: compiles case management statistics, develops and promotes modern and uniform management procedures to accommodate the needs of the state's courts, continuously studies and evaluates information relating to the operations and administrative methods of the judicial system, develops and implements new methods and techniques to provide cost-effective management of all aspects of the judicial system, prepares and submits budget and accounting estimates relating to state appropriations for the judicial system and provides administrative support to state judges, clerks of court and other judicial officials.

Judicial Coordinating Committee. The Judicial Coordinating Committee, composed of 21 representatives of the judiciary and the criminal justice community, is chaired by the chief justice. The committee establishes priorities for the improvement of the courts of the state; defines, develops, approves, and coordinates programs and projects for such improvements; and develops an annual state judicial plan to coordinate the implementation of court programs.

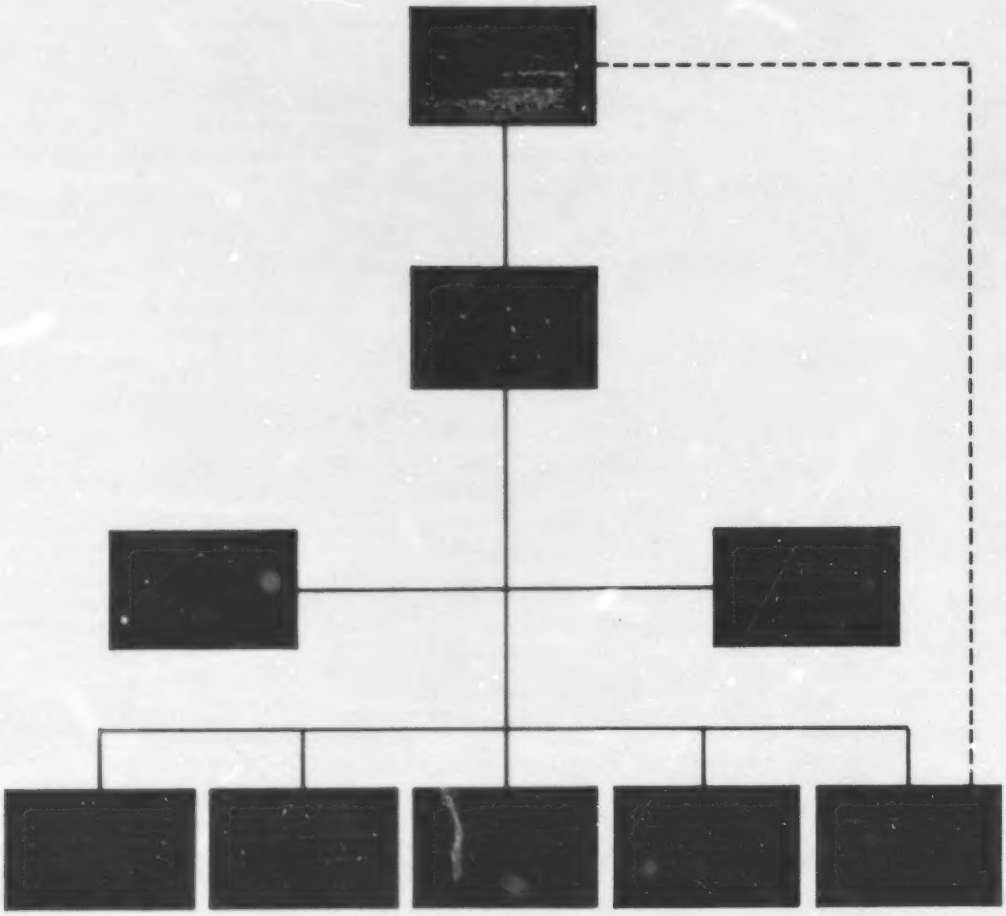
The Judicial System Study Commission. Under Alabama law, the Judicial System Study Commission has the responsibility of continuously studying and making recommendations concerning the judicial system of the state and the administration of justice, including criminal punishment and rehabilitation.

The commission is chaired by the chief justice of the supreme court and is composed of six members of the House Judiciary Committee, six members of the Senate Judiciary Committee, the speaker of the house, the lieutenant governor, members of the Judicial Conference, the legal advisor to the governor and a member of the staff of the attorney general. There is also an advisory section composed of nine members representing circuit court clerks and registers, district attorneys and law enforcement officials.

Alabama Judicial College. The purpose of the Alabama Judicial College is to design, organize, administer and evaluate professional education and training for judges, clerks and registers, court reporters, judicial and other court personnel on a continual basis.

BEST COPY AVAILAB.

ADMINISTRATIVE OFFICE OF COURTS ORGANIZATIONAL CHART



GLOSSARY OF LEGAL AND JUDICIAL TERMS

A

ACCESSORY — person who contributes to or aids in the commission of a crime.

ACQUIT — to find a defendant innocent in a criminal trial.

ACTION — proceeding taken in a court of law. Synonymous with case, suit, lawsuit.

ADJUDICATION — a judgment or decree.

ADMINISTRATOR (ADMINISTRATRIX) — one who administers the estate of a person who dies without leaving a will; a court official.

ADVERSARY SYSTEM — the system of trial practice in the U.S. and some other countries in which each of the opposing, or adversary, parties has full opportunity to present and establish its opposing contentions before the court.

AFFIDAVIT — a written statement of fact, signed and sworn to before a person having authority to administer an oath.

ALIAS, ALSO KNOWN AS (AKA) — an assumed name.

ALIMONY — a sum of money which a court orders a spouse to pay to his or her separated or ex-spouse, for support, aid, maintenance.

ALLEGATION — the assertion, declaration or statement of a party to an action made in a pleading, stating what he expects to prove.

ANNULMENT — a court order declaring that a marriage or other agreement or contract is invalid or not legal.

ANSWER — a written statement of the defendant's case, where the plaintiff are admitted or denied.

APPEAL — process by which a case is brought from one court to a higher court for review.

APPEARANCE — the formal proceeding by which a defendant submits himself to the jurisdiction of the court.

APPELLANT — party appealing a decision or judgment to a higher court.

APPELLATE COURT — a court having jurisdiction over appeal and review.

APPELLEE — the party against whom an appeal is taken. Also called a "respondent."

ARBITRATION — the hearing and settlement of a dispute between opposing parties by a third party whose decision the parties have agreed to accept.

ARRAIGNMENT — an initial hearing in criminal cases where the defendant is informed of the charges against him, advised of his rights, and allowed to plead. Bail may be set at this hearing.

ATTACHMENT — a procedure by which a person's property is restrained by the court to secure payment of the court.

B

BAIL — an amount of money determined by the judge and posted with the court clerk as security to ensure the defendant's appearance in court at a specific time.

BAIL BOND — agreement by a surety to pay a certain sum of money if the defendant fails to appear in court.

BAILIFF — court attendant whose duties include keeping order in the courtroom and maintaining custody of the jury.

BIND OVER — to hold for trial or presentation to the grand jury.

BRIEF — document prepared by an attorney and filed in court which presents the law and facts supporting his case.

BURDEN OF PROOF — obligation of a party to prove facts at issue in the trial of a case. In criminal cases, the state has the burden of proof.

C

CALENDAR — list of cases arranged for trial in court; a docket.

CAPITAL OFFENSE — a felony punishable by death.

CASE — any proceedings, action, cause, suit, lawsuit, or controversy initiated through the court system by filing a complaint, petition, or indictment.

CAUSE — a suit, litigation or action — civil or criminal.

CERTIORARI — document or action removing a case from a trial court to an appellate court for review or from an appellate court to the supreme court.

CHALLENGE FOR CAUSE — to formally call into question the capability of a venireman to serve as a juror in a case.

CHARGE — formal accusation of having committed a criminal offense.

CHARGE TO THE JURY — a judge's instructions to the jury which contains information about the laws which relate to the issues to be decided.

CIRCUMSTANTIAL EVIDENCE — all evidence of indirect nature; the process of decision by which court or jury may reason from circumstances known or proved to establish by inference the principal fact.

CITATION — reference to legal authorities and precedents.

CIVIL LAW — all law that is not criminal law; usually pertains to the settlement of disputes between individuals.

CLAIM FOR RELIEF — the facts which make the basis for a case or lawsuit.

CLERK OF COURT — officer of a court whose principal duty is to maintain court records.

CODE — an official compilation of all permanent laws in force, classified according to subject matter.

CODICIL — a supplement or an addition to a will.

COMMIT — to lawfully send a person to prison, an asylum, or reformatory.

COMMUTATION — change of punishment from a greater to a lesser degree, as from death to life imprisonment.

COMPLAINANT — synonymous with "plaintiff."

COMPLAINT (civil) — initial pleading by the plaintiff in a civil case stating the claims against the defendant.

COMPLAINT (criminal) — charge that a person has committed an offense.

CONTEMPT OF COURT — an act that is meant to embarrass, hinder or obstruct a court in the administration of justice. **Direct** contempt is committed in the presence of the court; **indirect** contempt is when a lawful order is not carried out or is refused.

CONTINUANCE — adjournment of the proceedings in a case from one day or term to another.

CONTRIBUTORY NEGLIGENCE — a legal doctrine that if the plaintiff in a civil action for negligence was also negligent, he cannot recover damages from the defendant for the defendant's negligence.

CONVICT — (n) one who has been found guilty of an offense; (v) to find a person guilty of a charge.

CORPUS DELICTI — the body of the crime; literally, all the facts and circumstances which go to make up the commission of a crime.

CORRECTIONS — a system by which offenders are disciplined and rehabilitated through confinement, parole, probation, and counseling.

CORROBORATING EVIDENCE — evidence supplementary to that already given and tending to strengthen or confirm it.

COUNSEL — an attorney; one who gives advice, especially legal advice.

COUNTERCLAIM — claim presented by a defendant following the claim of the plaintiff.

COURT — 1. place where justice is administered; 2. judge or judges formally engaged in administering justice.

COURT ADMINISTRATOR — manager of non-judicial affairs of the court.

COURT REPORTER — person who records and transcribes the testimony at court sessions.

CRIME — an act in violation of criminal law; an offense against the State.

CRIMINAL LAW — body of law which defines offenses against the State.

CROSS APPEAL — where both parties to a case appeal from the judgment rendered therein.

CROSS-CLAIM — claim brought by a defendant against another party.

CROSS-EXAMINATION - questioning of a witness in a trial, or in the taking of a deposition, by the party opposed to the one who produced the witness.

CUSTODY — detaining of a person by lawful process or authority; actual imprisonment.

D

DAMAGES — compensation recovered in the courts by a person who has suffered loss, detriment, or injury to his person, property or rights through the unlawful act or negligence of another.

DECLARATORY JUDGMENT — a judgment that declares the rights of the parties or expresses the opinion of the court on a question of law.

DECREE — a decision or order of the court. A **final decree** completes the suit; an **interlocutory decree** is a provisional or preliminary decree which is not final.

DEFAULT — when a defendant does not plead within the allowable time or does not appear at the trial, a judgment for the claim against him may be entered.

DEFENDANT — the person against whom a lawsuit is started or a crime charged. The defendant is sometimes called the "respondent."

DEMUR — to file a pleading admitting the truth of the facts in the complaint, or answer, but contending they are legally insufficient. Demurrers have been abolished in Alabama procedure.

DEPOSITION — testimony taken and recorded in an authorized place outside of the courtroom.

DIRECTED VERDICT — an instruction by the judge to the jury to return a specific verdict because the evidence as presented by the plaintiff will not legally support any other verdict.

DIRECT EXAMINATION — the first interrogation of a witness by the party on whose behalf he is called.

DISCOVERY — a pre-trial proceeding where a party to an action may be informed about the facts known by other parties or witnesses.

DISMISSAL WITH PREJUDICE — when a case is dismissed by the judge and the losing party is prohibited from raising the issue again in another lawsuit.

DISMISSAL WITHOUT PREJUDICE — the losing party is permitted to sue again with the same cause of action.

DISPOSITION — determination of a charge; termination of any legal action.

DISSOLUTION — legal ending of a marriage contract.

DOCKET — brief entry in a book; may also refer to the book containing such entries of proceedings in a court.

DOMICILE — that place where a person has his true and permanent home. A person may have several residences, but only one domicile.

DOUBLE JEOPARDY — common-law and constitutional prohibition against more than one prosecution for the same crime, transaction or omission.

DUE PROCESS — constitutional provision which guarantees that rights will not be affected without notice and an opportunity to be heard.

E

EMBEZZLEMENT — the fraudulent appropriation by a person to his own use or benefit of property or money entrusted to him by another.

EMINENT DOMAIN — the power to take private property for public use by condemnation.

EN BANC — on the bench. All judges of an appellate court hearing a case at once.

ENJOIN — to require a person, by writ of injunction issued by a court to perform, or to abstain from some act.

ENTRAPMENT — the act of officers or agents of a government of inducing a person to commit a crime not contemplated by him for the purpose of instituting a criminal prosecution against him.

ET AL. — and others.

ET SEQ. — an abbreviation for et sequentes, or et sequentia, meaning "and the following."

EVIDENCE — any form of proof legally presented at a trial through witnesses, records, documents, etc.

EXPERT EVIDENCE — testimony given by those qualified to speak with authority with regard to scientific, technical or professional matters.

EX CONTRACTU — in both civil and common law, rights and causes of action are divided into two classes: those arising **ex contractu** (from a contract) and **ex delicto** (from a wrong or tort).

EX DELICTO — rights and causes of action arising from a wrong or tort.

EX PARTE — by or for one party; done for in behalf of, or on the application of, one party only.

EX POST FACTO — after the fact; an act or fact occurring after some previous act or fact, and relating thereto.

EXECUTE — when used in connection with an order of process, the term means "to carry out, complete or dispose of properly or according to law."

EXHIBIT — paper, document or other object received by the court as evidence, during a trial or hearing.

EXONERATE — to free from suspicion; to show someone to be free of guilt.

EXTENUATING CIRCUMSTANCES — circumstances which render a crime less aggravated, heinous, or reprehensible than it would otherwise be.

EXTRADITION — the formal process of delivering a person found in one state to the authorities of another state where that person has been accused or convicted of a crime.

F

FALSE IMPRISONMENT — any unlawful physical restraint of another's liberty, whether in prison or elsewhere.

FALSE PRETENSE — designed misrepresentation of existing fact or condition whereby a person obtains another's money or goods.

FELONY — a crime of a graver nature than a misdemeanor. Generally, an offense punishable for more than one year.

FORGERY — the false making or material altering, with intent to defraud, or any writing which, if genuine, might be the foundation of a legal liability.

FRAUD — an intentional perversion of truth; deceitful practice or device resorted to with intent to deprive another of property or other right, or in some manner to do him injury.

G

GARNISHEE — (n) the person upon whom a garnishment is served, usually a debtor of the defendant in the action; (v) to institute garnishment proceedings.

GARNISHMENT — proceeding whereby property, money or credits of a debtor in the possession of another, are applied to the debts of the debtor, as in the garnishment of a person's wages.

GUARDIAN AD LITEM — one who is appointed by a court to manage the interests of an infant.

H

HABEAS CORPUS — literally means "you have the body." The name of a variety of writs which require a person to be brought before a judge. It is usually used to direct an official to produce a prisoner so that the court may determine if such person has been denied his liberty without due process.

HARMLESS ERROR — in appellate practice, an error committed by a lower court during a trial but not prejudicial to the rights of the appellant and for which the court will not reverse the judgment.

HEARING — appearance before the judge by attorneys and interested parties in a case, generally open to the public.

HEARSAY — evidence based on what the witness has heard someone else say, rather than what he has personally experienced.

HOSTILE WITNESS — a witness who is subject to cross-examination by the party who called him to testify, because of his evident antagonism toward that party as exhibited in his direct examination.

HUNG JURY — when a jury cannot agree on a verdict.

I

IMMUNITY — freedom from duty or penalty.

IMPEACHMENT OF WITNESS — an attack on the credibility of a witness.

INADMISSIBLE — that which, under the established rules of evidence, cannot be admitted or received in a judicial action.

INCARCERATION — commitment to jail or prison.

INDICTMENT — written accusation of a grand jury, charging that a person or business committed a crime.

INDIGENT — impoverished; needy; poor; without funds.

INJUNCTION — writ or order by a court prohibiting a specific action from being carried out by a person or group.

INSTRUCTION — direction given by a judge to the jury regarding the law in a case.

INTER ALIA — among other things or matters.

INTERLOCUTORY — provisional; temporary; not final. Refers to orders and decrees of a court.

INTERROGATORIES — written questions developed by one party's attorney for the adversary in a case who must respond in writing and under oath.

INTESTATE — one who dies without leaving a will.

J

JUDGE — an elected or appointed official with authority to hear and decide cases in a court of law.

JUDGMENT — a final determination by a court of the rights and claims of the parties in an action.

JURISDICTION — authority of a court to exercise judicial power.

JURISPRUDENCE — the philosophy of law, or the science of the principles of law and legal relations.

JURY — specific number of people selected as prescribed by law to render a decision (verdict) in a trial.

> **GRAND JURY** — a jury that hears complaints in criminal cases and finds bills of indictment in cases where there is probable cause that a crime was committed.
>
> **PETIT JURY** — a jury of twelve (or fewer) persons for the trial of a civil or criminal case.

L

LAW — rules and principles of conduct promulgated by the legislature, court decisions, or local customs.

LEADING QUESTION — one which instructs a witness how to answer or suggests the answer desired. Prohibited on direct examination.

LEVY — a seizure; the obtaining of money by legal process through seizure and sale of property; the raising of the money for which an execution has been issued.

LIABLE — when it is determined that the plaintiff in a civil case has proved his claim against the defendant, the defendant is "liable" (rather than "guilty," as in a criminal case).

LIBEL — a method of defamation expressed by print, writing, pictures, or signs. In its most general sense, any publication that is injurious to the reputation of another.

LITIGANT — one who is engaged in a lawsuit.

LITIGATION — contest in court.

M

MAGISTRATE — court officials with limited authority to issue warrants.

MALFEASANCE — civil wrong-doing; ill conduct; the commission of some act which is prohibited by law.

MALICIOUS PROSECUTION — an action instituted with intention of injuring defendant and without probable cause, and which terminates in favor of the person prosecuted.

MANDAMUS — the name of a writ which issues from a court of higher jurisdiction, directed to an inferior court, commanding the performance of a particular act.

MANDATE — command from a court directing the enforcement of a judgment, sentence or decree.

MIRANDA WARNING — a warning given prior to custody, advising or informing the individual of his or her rights.

MISDEMEANOR — offense less serious than felonies; generally those punishable by fine or imprisonment for less than one year.

MISFEASANCE — a misdeed or trespass; the improper performance of some act which a person may lawfully do.

MISTRIAL — an erroneous or invalid trial; a trial declared defective and void due to prejudicial error in the proceedings.

MITIGATING CIRCUMSTANCES — one which does not constitute a justification or excuse for an offense, but which may be considered as reducing the degree of moral culpability.

MOOT — oral or written request made by a party for an action before, during or after a trial upon which a court issues a ruling or order.

N

NEGLIGENCE — the failure to do something which a reasonable person, guided by ordinary considerations, would do; or the doing of something which a reasonable and prudent person would not do.

NEXT FRIEND — person acting for the benefit of a child or adult without being appointed guardian.

NOLLE PROSEQUI — a formal entry upon the record by the prosecuting officer in a ciminal case, by which he declares that he "will no further prosecute" the case.

O

OATH — written or oral pledge by a person to keep a promise or speak the truth.

OBJECTION — statement by an attorney taking exception to testimony or the attempted admission of evidence.

OFFENSE — a crime or misdemeanor; a breach of the criminal laws.

OF COUNSEL — phrase used to connote attorneys that are employed by a party to assist in the preparation or management of a case, but who is not the principal attorney of record.

OPINION — statement by a judge or court of a decision reached regarding a case tried before it.

OPINION, PER CURIAM — phrase used to distinguish an opinion of the whole court from an opinion written by one judge.

OPINION, WRITTEN — in appellate courts, the decision of judges which is recorded and published based on established legal precedents.

ORDINANCE — a local law or regulation enacted by a municipal government. It has no effect outside the jurisdiction of that city or town.

ORAL ARGUMENT — pleading by word of mouth, in the actual presence of the court.

OVERRULE — court's denial of any motion or point raised to the court; to overturn or make a prior case void.

P

PANEL — a list of jurors to serve in a particular court or for the trial of a particular action; denotes either the whole body of persons summoned as jurors for a particular term of court or those selected by the clerk by lot.

PARDON — an act proceeding from the executive branch of government which exempts an individual from the punishment imposed for a crime of which he has been convicted.

PAROLE — conditional release of a convict from prison prior to the expiration date of his sentence. If the conditions are met, the parolee does not have to serve the remainder of his sentence.

PARTIES — persons, corporations, or associations, who have brought a lawsuit or who are defendants.

PER-CURIAM OPINION — an appellate opinion issued by the entire appellate court.

PERJURY — criminal offense of making false statements under oath.

PERSONAL RECOGNIZANCE — pretrial release without bail in criminal proceedings; own promise to appear.

PETITION — original pleading (complaint) filed by the plaintiff seeking equitable relief.

PETITIONER — person who begins an action seeking equitable relief.

PLAINTIFF — party in a civil suit who files a complaint seeking legal relief.

PLEA — statement made by the defendant as to his guilt or innocence to the charge made against him.

PLEA BARGAINING — process in which the accused and the prosecutor negotiate a mutually satisfactory disposition of the case. Such bargains are not binding on the court.

PLEADINGS — formal written allegations by the parties of their respective claims and defense for the judgment of the court.

POLLING THE JURY — a practice whereby the jurors are asked individually whether they agree to the verdict.

POWER OF ATTORNEY — document authorizing another to act as one's agent or attorney.

PRECEDENT — previously decided case which is recognized as the authority for determining future cases.

PREJUDICIAL ERROR — synonymous with "reversible error"; an error which warrants the appellate court to reverse the judgment before it.

PRELIMINARY HEARING — hearing given a person charged with a crime by a magistrate or judge to determine whether he should be bound over to the grand jury.

PREPONDERANCE OF EVIDENCE — greater weight of evidence which is more credible and convincing to the mind.

PROBABLE CAUSE — reasonable cause; having more evidence for than against; a reasonable belief that a crime has or is being committed is the basis for all lawful searches and arrests.

PROBATE — civil actions involving wills, the settlement of estates and guardianships.

PROBATION — set of conditions and regulations under which a person found guilty of a criminal offense is allowed to remain in the community and generally under the supervision of a probation officer and custody of the court.

PROCEEDING — particular legal action or course of action.

PRO SE — a short form of "in propria persona" which is Latin for "in one's own proper person." This refers to a person who represents himself in court without the aid of a lawyer.

PROSECUTION — act of pursuing a lawsuit or criminal trial; the party initiating a criminal suit such as the State of Alabama.

PROSECUTOR (PROSECUTRIX)— public officer who performs the function of trial lawyer for the State.

Q

QUASH — to overthrow; vacate; to annul or void a summons or indictment.

QUID PRO QUO — what for what; a fair return or consideration.

QUO WARRANTO — a remedy available to the State for the protection of the public interest. The State may issue this writ in order to prevent a party from unlawfully exercising powers or authority which that party does not possess, under law or franchise granted by the State.

R

REASONABLE DOUBT — an accused person is entitled to acquittal if, in the minds of the jury, his guilt has not been proved beyond a "reasonable doubt"; that state of minds of jurors in which they cannot say they feel an abiding conviction as to the truth of the charge.

REBUTTAL — the introduction of refuting evidence; the attempt to show that statements of witnesses as to what occurred are not true.

RECORD ON APPEAL — a copy of the pleadings, exhibits, orders or decrees filed in a case in the trial court, and a transcript of the testimony taken in the case.

REDIRECT EXAMINATION — follows cross-examination and is exercised by the party who first examined the witness.

REMAND — (n) a disposition by an appellate court that results in sending the case back to the original court where it was tried so that some action can be taken; (v) to send back.

REPLY — pleading by the plaintiff in response to the defendant's written answer.

RESPONDENT — party against whom an appeal is brought in the court of appeals.

REST — a party is said to "rest" or "rest the case" when he has presented all the evidence he intends to offer.

RESTITUTION — act of giving the equivalent for any loss, damage or injury.

REVERSAL — setting aside, annulling, vacating or changing to the contrary the decision of a lower court or other body.

REVIEW — to re-examine judicially; a reconsideration. Used especially in the examination of a cause by an appellate court.

S

SEARCH AND SEIZURE, UNREASONABLE — in general, an examination without authority of law of one's premises or person with a view to discovering contraband or illicit property or some evidence of guilt to be used in prosecuting a crime.

SEARCH WARRANT — an order in writing, issued by a judge or attorney magistrate in the name of the State, directing an officer to search a specific house or other premises for stolen property. Usually required as a condition precedent to a legal search and seizure.

SELF-DEFENSE — the protection of one's person or property against some injury attempted by another.

SENTENCE — a judgment formally pronounced by the court upon the defendant after his conviction in a criminal prosecution, imposing the punishment.

SENTENCE, ACCUMULATIVE — a sentence, additional to others imposed at the same time for several distinct offenses; one sentence to begin at the expiration of another.

SENTENCE, CONCURRENT — sentence which overlaps with another for a period of time.

SENTENCE, CONSECUTIVE — sentence which runs separately from one or more other sentences to be served by the same individual. One sentence begins after an existing sentence has terminated.

SENTENCE, INDETERMINATE — an indefinite sentence with the exact term to be determined by parole authorities within the minimum and maximum limits set by statute.

SENTENCE, SUSPENDED — sentence on which execution has been withheld by the court based on terms and conditions.

SERVICE — delivery or communication of a legal document in a suit to the opposite party.

SET ASIDE — annul or void as in "setting aside" a judgment.

SETTLEMENT — conclusion of a legal matter; a compromise reached by the opposing parties in a civil suit eliminating the need for the judge to resolve the controversy.

SLANDER — base and defamatory spoken words tending to harm another's reputation, business or means of livelihood.

STATUTE — the law as enacted by the legislature.

STATUTE OF LIMITATIONS — law which specifies the time within which parties must take judicial action to enforce their rights.

STAY — halting of a judicial proceeding by order of the court.

STIPULATION — agreement by the attorneys and parties on opposite sides of a case regarding any matter in the trial proceedings.

STRIKING A JURY — process of selecting a trial jury where attorneys "strike" or excuse jurors from the trial until only the number needed remains.

SUBPOENA — document issued by the court to compel a witness to appear and give testimony or produce documentary evidence in a proceeding.

SUBPOENA DUCES TECUM — literally "under penalty you shall take it with you." A process by which the court commands a witness to produce specific documents or records in a trial.

SUBSTANTIVE LAW — the law dealing with rights, duties and liabilities, as distinguished from law regarding procedure.

SUIT — any court proceeding in which an individual seeks a decision (see case).

SUMMONS — document directing the sheriff or another officer to notify the person named in an action that he is being sued; document ordering a witness or juror to duty.

T

TESTIMONY — any statement made by a witness under oath in a legal proceeding.

TORT — a civil category that includes cases in which an injury or wrong doing has been committed, either with or without force, to the person or property of another, not including breach of contract.

TRANSCRIPT — official record of proceedings in a hearing or trial.

TRANSITORY — actions are "transitory" when they might have taken place anywhere.

TRIAL — examination of issues of fact and law in a suit before a court that has jurisdiction over the case.

TRIAL DE NOVO — trial on appeal to a higher trial court which is held as if no previous trial had been held.

U

UNLAWFUL DETAINER — a withholding of real estate without the consent of the owner or other person entitled to its possession.

USURY — the taking of more interest to the use of money than the law allows.

V

VENIRE — members of a panel of jurors.

VENUE — specific county, city or geographical area in which a court with jurisdiction may hear a case.

CHANGE OF VENUE — removal of a suit started in one county to another for trial, or from one court to another in the same county.

VERDICT — formal decision made by a jury, read before the court and accepted by the judge.

VIOLATION — offense for which a sentence to a term of imprisonment not in excess of thirty days may be imposed.

VOIR DIRE — to speak the truth. The preliminary examination of a witness or juror as to qualifications.

W

WAIVE — to give up a right, claim, or privilege voluntarily.

WARRANT OF ARREST — a writ issued by a magistrate, judge, or other competent authority, to a sheriff, or other officer, requiring him to arrest a person therein named and bring him before the magistrate or court to answer to a specified charge.

WILLFUL — A "willful" act is one done intentionally, as distinguished from an act done carelessly or inadvertently.

WITNESS — person who testifies before a court under oath regarding what he has seen, heard or otherwise observed.

WRIT — written court order directing a specific person to perform or refrain from performing a specific act.

WRIT OF CERTIORARI — petition to the Supreme Court of Alabama to review a decision of the Court of Criminal Appeals or the Court of Civil Appeals.